

Study E-100

June 9, 1999

Memorandum 99-42**Reorganization of Environmental and Natural
Resource Statutes: Draft Report**

At the April 1999 meeting, the Commission decided against proceeding with the reorganization of environmental statutes. The history of the project and that decision are memorialized in the attached staff draft report.

If approved by the Commission, the report will be printed as an appendix to the next Annual Report, or other appropriate pamphlet.

Respectfully submitted,

Brian Hebert
Staff Counsel

#E-100

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

REPORT

Reorganization of Environmental and Natural Resource Statutes

June 1999

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335 FAX: 650-494-1827

SUMMARY OF RECOMMENDATION

The California Law Revision Commission was directed by the Legislature to study whether the laws within various codes relating to environmental quality and natural resources should be reorganized. Significant opposition by those who would be most affected by such reorganization has convinced the Commission that the reorganization should not be undertaken.

This report was prepared pursuant to Resolution Chapter 91 of the Statutes of 1998.

REORGANIZATION OF ENVIRONMENTAL AND NATURAL RESOURCE STATUTES

Legislative Direction

In 1996, the Legislature directed the California Law Revision Commission to study:

Whether the laws within various codes relating to environmental quality and natural resources should be reorganized in order to simplify and consolidate relevant statutes, resolve inconsistencies between the statutes, and eliminate obsolete and unnecessarily duplicative statutes.¹

It was hoped that reorganization would make these statutes more easily accessible to businesses and individuals that are subject to environmental regulation.

Proposed Outline

In 1997, the Commission developed a detailed outline of a proposed Environment Code with the advice of its consultants, Professors John P. Dwyer² and Brian E. Gray.³ The Commission circulated the outline and requested public comment on the advantages and disadvantages of reorganizing California's environmental statutes along the lines proposed. Public reaction was mixed. Some commentators felt that the creation of a consolidated and well-organized body of environmental statutory law would be quite beneficial. Others felt that reorganization was unnecessary because electronic research tools and commercially available practice guides already made environmental and natural resource statutes sufficiently accessible. Some were concerned that the disadvantages of reorganization would outweigh the benefits. The identified disadvantages include:

(1) *Transitional Costs.* The proposed reorganization would require the renumbering of nearly all environmental and natural resource statutes. After renumbering, those who use the statutes would need to learn the new numbering scheme and replace obsolete reference materials, at a significant cost. Also, administrative agencies responsible for enforcing the statutes would need to amend their regulations to reflect the new numbering.

(2) *Ongoing Costs.* Statutory renumbering would require the use of a cross-reference table relating old section numbers to new section numbers in order to

1. See 1996 Cal. Stat. res. ch. 38.

2. Professor Dwyer, Boalt Hall School of Law, is editor of California Environmental Laws Annotated (Bancroft-Whitney 1997).

3. Professor Gray, Hastings College of Law, is editor of California Environmental Laws (West 1998).

1 understand material that cites the old section numbers (e.g., a previously published
2 court opinion).

3 (3) *Risk of Inadvertent Policy Change*. Despite the Commission's intention that
4 the reorganization be nonsubstantive, drafting errors and changes in interpretive
5 context could have a substantive effect on the meaning of reorganized provisions.

6 **Trial Installment**

7 In response to the public's mixed reaction to the concept of statutory
8 reorganization, the Commission decided to prepare a trial installment of the
9 proposed Environment Code. This would provide a more tangible basis for
10 evaluating the merits of reorganization.

11 In July 1998, the Commission released a tentative recommendation setting out
12 the first four divisions of the Environment Code and soliciting public comment.
13 The response to the tentative recommendation was not favorable. Reactions ranged
14 from doubt and concern to outright opposition. The same concerns were expressed
15 that had been raised earlier — reorganization is unnecessary, would impose
16 transitional and ongoing costs, and would result in inadvertent substantive
17 change.⁴ Significantly, critics of the tentative recommendation now included
18 business groups (who, as a class, were intended to benefit from reorganization).⁵

19 **Legislative Guidance**

20 In light of the negative reaction to the tentative recommendation, the
21 Commission decided to seek additional guidance from the Legislature. To that
22 end, an informational hearing was held by the Assembly Natural Resources
23 Committee on March 15, 1999. After considering testimony from Commission
24 staff and from members of the public, the majority of the committee members
25 strongly urged that the reorganization not go forward:

26 In short, while a noble idea, the practicality of developing a consolidated
27 environmental code is diminished by the potential confusion, inconsistency and
28 cost of the task. For these reasons, we strongly urge that the Commission end this
29 project and focus its efforts on other, more productive projects.⁶

30 **Conclusion**

31 It is clear that many of those who would be affected by the reorganization of
32 environmental and natural resource statutes believe that the reorganization would

4. The commentators did not identify any provision in the trial installment that would have caused a substantive change, but still believed the risk of inadvertent substantive change to be significant.

5. See, e.g., letter from Victor Weisser, California Council for Environmental and Economic Balance (Nov. 16, 1998) (attached to Memorandum 98-76, on file with California Law Revision Commission), letter from Brian E. White, California Chamber of Commerce (Nov. 16, 1998) (attached to Memorandum 98-76, on file with California Law Revision Commission).

6. Letter from Assembly Natural Resources Committee members (April 5, 1998) (on file with California Law Revision Commission).

- 1 impose significant costs and would not significantly improve the law. In light of
- 2 this public response, the Commission has decided not to proceed with the
- 3 reorganization.